IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 9 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No @
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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

JASHODABEN W/O MANUBHAI R RAJ

Appearance:

MR DP JOSHI, A.P.P. for the appellant-State

MR VIJAY H PATEL for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 04/05/99

ORAL JUDGEMENT
(Per : Kadri, J.)

The acquittal of the respondents recorded by the learned Extra Assistant Sessions Judge, Kheda at Nadiad vide judgment and order dated August 30, 1991 rendered in Sessions Case No. 210/90 for the offences punishable under sections 306, 498-A & 114 of the Indian Penal Code is challenged by the appellant in this appeal which is filed under section 378 of the Code of Criminal Procedure, 1973.

2. The facts of the prosecution case be stated in nutshell are as under :-

Manjulaben (hereinafter to be referred to as "deceased") was daughter of Motibhai Prabhatsinh and was married to respondent no.2 Kanubhai @ Harishbhai Manubhai Raj 4 years prior to the date of the incident i.e. October 25, 1989. The respondent no.1 is the mother of respondent no.2 and mother-in-law of the deceased. The respondent no.2 was working in Gujarat Police Force and was staying at the relevant time with respondent no.1 and the deceased at the Policeline, Balasinor. As per the prosecution case, the deceased was meted out cruelty by the respondents, which ultimately led her to commit suicide by jumping in the well which was near Policeline. The respondents frantically searched the deceased and ultimately her dead body was found from the well. With the help of one wooden cot, dead body of the deceased was taken out from the well and it was taken to village Shili where father of the deceased was residing. On October 25, 1989, occurrence report was made at Balasinor for the death of the deceased which was registered as Accidental Case No.8/89. Inquest on the dead body of the deceased was held under a panchnama and thereafter her dead body was sent for postmortem to Community Health Centre, Balasinor, where autopsy was performed by Dr. Shashikant S. Nagori on October 27, 1989 from 12.30 P.M. to 2.15 P.M. Mr. N.D.Solanki, Deputy Superintendent of Police of Kapadwanj, who was incharge of investigation, recorded statements of witnesses who were conversant with the accidental death of the deceased. During the investigation, Deputy Superintendent of Police was of the opinion that the deceased had committed suicide due to cruelty and harassment meted out to her by the

respondents and, therefore, he lodged complaint against the respondents on October 29, 1989 for the offences punishable under sections 498-A, 306 & 114 of the Indian Penal Code which was registered as C.R.No. I. 149/89 of Balasinor Police Station. Viscera which was collected during postmortem, was sent for analysis to Forensic Science Laboratory for finding out the cause of death. Various panchnamas, such as, panchnama of place of incident, panchnama of recovery of clothes of the deceased etc. were drawn by the investigating officer. After receipt of report from the Forensic Science Laboratory, chargesheet was filed in the Court of learned Judicial Magistrate, First Class, Balasinor. As offence under section 306 I.P.C. is exclusively triable by the Court of Sessions, the case was committed to the Court of learned Sessions Judge, Kheda at Nadiad, where it was numbered as Sessions Case No. 9/92.

3. Charge at Exh.2 was framed against the respondents for the offences punishable under sections 306, 498-A & 114 of the Indian Penal Code by the learned Assistant Sessions Judge, Kheda at Nadiad. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. To prove the charge against the respondents, prosecution examined; (1) Dr. Shashikant S. Nagori, PW.1 at Exh.23, (2) Shankerbhai Manabhai, PW.2 at Exh.25, (3) Dalpatsinh Kanjibhai, PW.3 at Exh.26, (4) Vamanrao Rajaram, PW.4 at Exh.29, (5) Motibhai Prabhatsinh, PW.5 at Exh.30, (6) Harishbhai Motibhai, PW.6 at Exh.31, and (7) Nitirajsinh Dahyabhai Solanki (Deputy Superintendent of Police), PW.7 at Exh.35. The prosecution to prove guilt against the respondents also produced documentary evidence, such as, complaint, various panchnamas, postmortem notes, report of Forensic Science Laboratory, notices issued by the competent authorities under the Bombay Police Act to respondent no.1 to vacate the quarter allotted to the husband of respondent no.1 etc.

4. After recording of the prosecution evidence was over, the respondents were questioned generally on the evidence produced by the prosecution against them and their statements were recorded under section 313 of the Cri.P.C. In their further statements, the respondents stated that they had not treated the deceased with cruelty and they were falsely involved in this case. The learned Assistant Sessions Judge after appreciating the oral as well as documentary evidence and the arguments advanced by the learned advocates of both the side, concluded that the evidence of the prosecution witnesses was contradictory as compared to their oral testimony in

the Court and their statements recorded by the investigating agency. The learned Assistant Sessions Judge further observed that there were many omissions and exaggerations which were fatal to the prosecution case. The learned Assistant Sessions Judge also observed that the witnesses who had deposed about the cruelty meted out to the deceased, had not made statement before the investigating agency that the deceased was meted out with cruelty by the respondents, as a result of which she was compelled to commit suicide by jumping in the well. The learned Assistant Sessions Judge observed that evidence of Vamanrao Rajaram, P.W.4 was an interested testimony before the Court and he was also inimical towards respondent no.1, as there was dispute between witness Vamanrao and respondent no.1 about residential quarter in the Policeline at Balasinor. It was also observed by the learned Assistant Sessions Judge that the prosecution witnesses had given statements after due deliberation at village Shili. The learned Assistant Sessions Judge concluded that the evidence of prosecution witnesses was improbable and untrustworthy and the evidence led by the prosecution did not establish that the deceased was treated with cruelty and was beaten by the respondents, as a result of which she was compelled to commit suicide by jumping into the well. On the basis of the above referred to conclusions, the learned Assistant Sessions Judge acquitted the respondents of the offences punishable under sections 306, 498-A & 114 of the Indian Penal Code vide judgment and order dated August 30, 1991, giving rise to present appeal.

5. Mr. D.P.Joshi, learned A.P.P. has taken us through the entire evidence produced on record and has submitted that the learned Assistant Sessions Judge ought to have placed reliance on the testimony of Motibhai Prabhatsinh, PW.5, who is father of deceased Manjulaben. It is further submitted that the evidence of P.W.5 Motibhai gets corroboration by the oral testimony of P.W.4- Vamanrao Rajaram and, therefore, the learned Assistant Sessions Judge ought to have held that the deceased was meted out with cruelty by the respondents. It is claimed by the learned A.P.P. that the learned Assistant Sessions Judge ought to have ignored minor contradictions and omissions as emerging in the evidence of prosecution witnesses. The learned A.P.P. further stressed that the deceased had committed suicide within a span of 7 years of her marriage with respondent no.2 and therefore, presumption under section 133-A of the Evidence Act ought to have been drawn against the respondents. It is further claimed that there was sufficient evidence produced by the prosecution before

Sessions Court, which proved that the respondents had treated the deceased with cruelty and harassment, which had compelled her to commit suicide. Lastly it is submitted by the learned A.P.P. that there is ample evidence on record of the case which connects the respondents with the crime and therefore, order of acquittal should be set aside and the appeal be accepted.

6. Mr. Vijay H.Patel, learned Counsel for the respondents has supported the reasonings recorded by the learned Assistant Sessions Judge for acquitting the respondents and has submitted that the evidence produced by the prosecution does not establish beyond reasonable doubt that the respondents had treated the deceased with cruelty, which had compelled her to commit suicide. It is claimed that the prosecution has not led any evidence to prove that the respondents abetted commission of cruelty compelling the deceased to commit suicide so as to attract provisions of Section 306 I.P.C. Lastly, it was submitted by the learned Counsel for the respondents that the order of acquittal recorded by the learned Assistant Sessions Judge is quite just and proper, which does not call for any interference of this Court and the appeal be dismissed.

7. The evidence of prosecution witness viz. P.W.5 Motibhai Prabhatsinh, who is father of the deceased, does not prove that the deceased was treated with cruelty by the respondents. There are many contradictions and omissions in the evidence of P.W.5- Motibhai which are brought on the record of the case by the evidence of investigating officer viz. Deputy Superintendent of Police Mr. N.D.Solanki. Before the investigating agency, P.W.5 Motibhai has not stated that the deceased had complained before him that the respondents were treating her with cruelty. Thus, there is no evidence forthcoming in the oral testimony of P.W.5- Motibhai, which would go to establish that the deceased was treated with cruelty by the respondents. The evidence of P.W.4 Vamanrao Rajaram is highly interested. It may be stated that this witness was inimical towards respondent no.1. The witness in his oral testimony before Court admitted that he has no personal knowledge that the respondents were treating the deceased with cruelty and were beating her. In the cross-examination, P.W.4 Vamanrao Rajaram admitted that after the dead body of the deceased was found from the well, he had gone to village Shili where father of the deceased was residing and the relatives of the deceased after due deliberation, had planned to lodge complaint against the respondents before the investigating officer Mr. N.D.Solanki. The evidence of

this witness is also full of contradictions which have been proved by the evidence of the investigating officer Mr. Solanki. The evidence of P.W. 3- Dalpatsinh, who is cousin of the deceased, is also full of contradictions and does not prove that the deceased was treated with cruelty by the respondents, which ultimately led her to commit suicide. The evidence of the witnesses examined by the prosecution as discussed above, does not prove that the deceased was treated with cruelty by the respondents. The evidence of prosecution witnesses about cruelty meted out to the deceased is highly improbable and untrustworthy. There is no iota of evidence to prove that the respondents had abetted or compelled the deceased to commit suicide so as to attract the provisions of section 306 I.P.C. In absence of any positive evidence with regard to cruelty meted out to the deceased by the respondents, learned Assistant Sessions Judge was justified in acquitting the respondents of the offences for which they were charged. We do not find any illegality or infirmity in the reasonings and conclusions recorded by the learned Assistant Sessions Judge for acquitting the respondents.

8. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficent in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince us to take the view contrary to the one already taken by the learned Judge and therefore, the appeal is liable to be rejected.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

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